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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
09/765,224

Applicant(s)

Fabin

Examiner
Joseph Weiss

Art Unit
3761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on Jul 3, 2003

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-41 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-41 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

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DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3 Jul 03 has been entered.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-8, 10-15, 17-33, 35-39 & 41 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tischer et al (US 6328031) in view of Corsini (US 6266828)

In regards to claim 12, Tischer discloses a hood respirator (Fig 3, 22) comprising a shroud (24) having a head covering portion (30) and a lens opening therein (opening best seen in blow out figs 13 & 21) and a body sealing portion (see fig 3, that portion of shroud 1 that encircles a user's neck, shoulders and upper torso elements 32-44) configured for forming a seal with a wearer's neck, shoulders or other body area, a facial lens (54) having a perimeter sealing edge

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(that portion of the lens that engages frame 60/cushion 58) extending around the lens, a disengageable coupling between the lens opening of the shroud and the perimeter sealing edge of the lens (62), the coupling having a first engaged condition wherein the lens is sealably affixed to the shroud (see fig 3) and a second released condition wherein the lens is removable from the shroud (see blow out figs), but does not explicitly disclose a breathing gas delivery conduit fluidly coupled to the hood. However, Corsini disclose such (element 5). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Corsini and used them with the device of Tischer. The suggestion/motivation for doing so would have been to because Tischer discloses the interconnection of the lens with a breathing apparatus and provides structure equal to that of Corsini in the lens for conduit coupling of the hood to a breathing apparatus (See Tischer's channel 57, see also col. 4 lines 15-20). Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 13, Tischer discloses the perimeter sealing edge as an integral, peripheral edge of the lens.(see figs 4-11)

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In regards to claim 14, Tischer discloses the use of a lens frame (60) disposed around the facial lens, wherein the perimeter sealing edge is a peripheral edge of the lens frame. (See figs 4-11)

In regards to claim 15, Tischer discloses the perimeter sealing edge of said facial lens and the lens opening having opposed rim portions (note that 60 and the lens of 26 have opposed rim portions) the use of opposite threaded members (See fig 8, 86 and those elements that oppose 86)

In regards to claim 17, Tischer discloses the perimeter sealing edge of said facial lens and the lens opening having opposed rim portions (note that 60 and the lens of 26 have opposed rim portions the use of opposed rim portions that includes cooperative mechanical engagement surfaces (See 72 & 74).

In regards to claim 18, Tischer discloses a full face piece seal (58) connected to the lens wherein the shroud is super-positioned over the full face piece seal through the disengageable coupling between the lens opening of the shroud and the perimeter sealing edge extending around the lens.

In regards to claim 19, the reference noted above substantially disclose the claimed invention except for the breathable gas delivery conduit communicating fluidly with the hood via the shroud, i.e. a reversal/rearrangement of known parts from what is set forth by the prior art applied.

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It is noted that applicant's specification does not set forth this reversal/rearrangement of known parts to facilitate the same purpose, as unexpectedly providing any new result or unexpectedly solving any new problem in the art over the prior art.

Accordingly, the examiner considers the selection of this reversal/rearrangement of known parts to achieve the same purpose/result to be a mere obvious matter of design choice and as such does not patently distinguish the claims over the prior art, barring a convincing showing of evidence to the contrary.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 20, Tischer discloses the delivery conduit communicating fluidly with the hood through the lens.

In regards to claim 21, Tischer discloses a hood respirator (Fig 3, 22) comprising a shroud (24) having a head covering portion (30) and a front opening therein (opening best seen in blow out figs 13 & 21) and a body sealing portion (see fig 3, that portion of shroud 1 that encircles a user's neck, shoulders and upper torso elements 32-44) configured for forming a seal with a wearer's neck, shoulders or other body area, a respiratory mask (26) having a perimeter sealing edge (that portion of the lens that engages frame 60/cushion 58) around the mask, a disengageable coupling between the lens opening of the shroud and the perimeter sealing edge of

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the lens (62), the coupling having a first engaged condition wherein the mask is sealably affixed to the shroud (see fig 3) and a second released condition wherein the mask is removable from the shroud (see blow out figs), but does not explicitly disclose the mask as having a breathing gas delivery conduit. However, Corsini disclose such (element 5). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Corsini and used them with the device of Tischer. The suggestion/motivation for doing so would have been to because Tischer discloses the interconnection of the mask with a breathing apparatus and provides structure equal to that of Corsini in the mask for conduit coupling of the mask to a breathing apparatus (See Tischer's channel 57, see also col. 4 lines 15-20). Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to claim 22, the suggested device discloses the breathable gas delivery conduit as connected to the mask through the lens. (See figs of Corsini)

In regards to claim 23, Tischer discloses a full face piece seal (58) connected to the lens wherein the shroud is super-positioned over the full face piece seal through the disengageable

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coupling between the lens opening of the shroud and the perimeter sealing edge extending around the lens.

In regards to claim 24, Tischer discloses the full face piece seal as being detachable from the respiratory mask (see any illustration of element 58's interface with the mask).

In regards to claim 25, Tischer discloses the mask having a harness attached to the respiratory mask, the harness adapted for securing the respiratory mask over a human face (see 28 or 174 of Tischer)

In regards to claim 26, Tischer discloses the respiratory mask as including a nose cup (See unnumbered nose-cup in Fig 12-13 & 21 of Tischer)

In regards to claim 27, Tischer discloses the nose cup as being detachable from the mask (Note fig 3 which illustrates no nose cup verses figs 12-13 & 21 which disclose a nose-cup)

In regards to claim 28, Tischer discloses a fastener attached to the hood (162) which is suitable for securing the nose cup over a human nose or mouth and capable of being tightened or loosened from the outside of the hood.

In regards to claim 29, Tischer discloses a kit comprising a plurality of body seals, that comprise at least a first type body seal (facial seal 58/123) and a second type body seal (hood-shroud 24, points of engagement of the hood with a user, see fig 3, that portion of shroud 1 that encircles a user's neck, shoulders and upper torso elements 32-44), each having a lens opening defined therein (See figs 13 & 21), a facial lens (54), which is fully capable of being interchangeable with other hoods and body suits which employ at least one of a plurality of body

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seals, and having a perimeter sealing edge (that portion of the lens that engages frame 60/cushion 58) extending around the lens, a disengageable coupling between the lens opening of the shroud and the perimeter sealing edge of the lens (62), the coupling having a first engaged condition wherein the lens is sealably affixed to the shroud (see fig 3) and a second released condition wherein the lens is removable from the shroud (see blow out figs 13 & 21), but does not explicitly disclose the kit as having a breathing gas delivery conduit fluidly coupled to each of the body seals or the lens. However, Corsini disclose such (element 5). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Corsini and used them with the device of Tischer. The suggestion/motivation for doing so would have been to because Tischer discloses the interconnection of the mask with a breathing apparatus and provides structure equal to that of Corsini in the mask for conduit coupling of the mask to a breathing apparatus (See Tischer's channel 57, see also col. 4 lines 15-20). Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

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In regards to claim 30, the suggested kit discloses the first and second types of body seals being a full face piece seal (58/123) and a respiratory hood. (22/113)

In regards to claim 31, the suggested kit discloses the first type of body seal being a full face piece (58/123) capable of forming a seal with a human face.

In regards to claim 32, the suggested kit discloses the second body seal being of the type that includes being a respiratory hood. (hood-shroud 24, points of engagement of the hood with a user, see fig 3, that portion of shroud 1 that encircles a user's neck, shoulders and upper torso elements 32-44)

In regards to claim 33, the suggested kit discloses the use of a coupling (62) adapted to urge opposed rim portions of the perimeter sealing edge on the lens and the lens opening together.

In regards to claim 35, the suggested kit discloses the opposed rim portions to include cooperative mechanical engagement surfaces (72 & 74)

In regards to claim 36, the suggested kit discloses the breathable gas delivery conduit as being configured for fluidic communication with each type of body seal.

In regards to claim 37, the suggested kit discloses the breathable gas conduit as being configured for fluidic communication with the lens (see any fig of Corsini and figs 13 & 21 of Tischer).

In regards to claim 38, Tischer discloses at least one hood (24/113) having a mask opening defined therein (See blowout figs 13 & 21), at least one respiratory mask (26), which is fully capable of being interchangeable with other hoods and body suits which employ at least one

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of a plurality of body seals, and having a facial lens (54) a full face piece seal (58/123) coupled with the lens (see e.g. figs 4-11) and a perimeter sealing edge extending around the mask (again see figs 4-11, note the interface between the edge of the mask with the facial seal 58), wherein the mask is capable of being selectively removably coupled with the hood along the perimeter sealing edge of the makes and the makes opening on the hood so that, when so coupled, the hood is super-positioned over the full face piece seal and a seal is defined between the hood and the mask (against note figs 4-11 which discloses this arrangement), but does not explicitly disclose the kit as having a breathing gas delivery conduit fluidly coupled to each of the body seals or the lens. However, Corsini disclose such (element 5). The references are analogous since they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Corsini and used them with the device of Tischer. The suggestion/motivation for doing so would have been to because Tischer discloses the interconnection of the mask with a breathing apparatus and provides structure equal to that of Corsini in the mask for conduit coupling of the mask to a breathing apparatus (See Tischer's channel 57, see also col. 4 lines 15-20). Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

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In regards to claim 39, the suggested kit discloses the face piece seal as being removable from the mask. (See figs 4-11, note that the separable frame facilitates integration/separation of the seal to the mask 26)

In regards to claim 41, the suggested kit discloses the breathable gas delivery conduit as being configured for fluid communication with the mask through the lens (see any fig of Cosini or elements 57/118 of Tischer)

In regards to method claims 1-8 & 10-11, one of ordinary skill in the art would appreciate that the method steps claimed in the instant application would naturally flow from the device disclosed in the prior art as noted above and therefore are rejected herein above with respect to claims 12-41.

4. Claims 9, 16 & 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tischer & Corsini as applied to claims 4, 12 & 33 above, and further in view of Reeves et al (US 5508084).

The suggested device substantially discloses the instant application's claimed invention to include discloses the perimeter sealing edge of said facial lens and the lens opening having opposed rim portions (note that 60 and the lens of 26 have opposed rim portions) of claim 16, but does not explicitly disclose the use of a repositionable microstructure adhesion interfaces for connecting the rim portions. However, Reeves disclose such (note the abstract and summary of the invention). The references are analogous since they are from the same problem solving area, the repositionable interconnection of element of a device). At the time the instant application's

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invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Reeves and used them with the suggested device. The suggestion/motivation for doing so would have been because the suggested device discloses the use of one species of repositionable interface of elements (note elements 72/74 hook & loop repositioning interface), therefore one of ordinary skill in the art would consider such to be an obvious interchangeable equivalent. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

In regards to method claim 9, one of ordinary skill in the art would appreciate that the method steps claimed in the instant application would naturally flow from the device disclosed in the prior art as noted above and therefore are rejected herein above with respect to claims 16 & 34.

5. Claim 40 is rejected under 35 U.S.C. 103(a) as being unpatentable over Tischer & Corsini as applied to claim 38 above, and further in view of Motsinger (US 2881758).

The suggested device substantially discloses the instant application's claimed invention, but does not explicitly disclose the use of a full body suit with the respiratory mask/hood ensemble. However, Motsinger disclose such (See any fig). The references are analogous since

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they are from the same field of endeavor, the respiratory arts. At the time the instant application's invention was made, it would have been obvious to one of ordinary skill in the art to have taken the features of Motsinger and used them with the suggested device. The suggestion/motivation for doing so would have been to protect the user's entire body from chem/bio hazards. Therefore it would have been obvious to combine the references to obtain the instant application's claimed invention.

Furthermore, such a feature is old and well known in the art, and one of skill in the art would consider such to amount to a matter of mere obvious and routine choice of design, rather than constitute a patently distinct inventive step, barring a convincing showing of evidence to the contrary.

Response to Arguments

6. Applicant's arguments filed 3 Jul 2003 have been fully considered but they are not persuasive.

In regards to applicant's bald assertion that the examiner has ignored applicant's remarks the examiner cites the "Response to arguments" section of the office action dated 3 Mar 03. This section has been duplicated below under the heading "EXAMINER RESPONSES TO APPLICANT'S PRIOR AMENDMENT" The examiner cites the rejection as being a reasoned basis fully IAW 5 USC 555 requirements of the provision of a reasoned basis on the patentability of the currently claimed invention applying the relevant sections of USC title 35, CFR 37 and the case law. Furthermore the examiner notes that office actions are intrinsic evidence of the record,

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which need to be written for the understanding of one of ordinary skill in the relevant art. A presumption is made that the inventor is at least one of ordinary skill. Finally the examiner notes that applicant is represented by legal counsel, hence a presumption of competence is also made in the drafting of the office action and responding to the applicant's amendments/arguments. If nay of these presumptions should be waived, please stipulate such on the record. However, a more "atomistic" explication of the examiner's clarion analysis shall be attempted for applicant/counsel's benefit because of the tone/tenor of applicant's instant response which appears to manifest a lack of understanding of the reasoned basis set forth by the examiner.

The office action's prior art rejection is under the legal rubric and standards of 35 USC 103, this is an "obviousness" or "non-obviousness" standard. Furthermore, claim language is given its plain meaning and during patent prosecution the claims as drafted by applicant are given their broadest reasonable interpretation as read in light of the written description, but limitations in the written description will not be read into the claims. Applicant may invoke a specific species of a broad but reasonable interpretation of the claim language definitions, as long as it is not repugnant to the term. Furthermore, pre-ambles may not limit unless they breath life, meaning and context into the claims, and only positively claimed limitations are accorded patentable weight, i.e. intended uses, results etc are not accorded patentable weight unless they implicate or inhere structure/specific positive limitations.

Regarding applicant's concern over the responsiveness of the remarks regarding the standards of 37 CFR 1.111(b) where applicant "feels" that by pointing to intended results

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language under the rubric of 35 USC 103 (obvious/non-obviousness legal standards) meets the burden of this substantive rule, applicant is in error. As noted in the reasoned basis that is the office action such language is not patently distinguishing and pointing to such language does noting to meet the burden of 37 CFR 1.111(b). Setting forth a brief summary of the “inventive concept” or the “gist” of the invention does meet the burden of this CFR, such an assertion is devoid from any and all of applicant’s statements, hence this assertion is renewed by the examiner:

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

Applicant's arguments do not comply with 37 CFR 1.111(c) because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

Contrary to applicant's bias spin/shell gaming of the elements of ht relevant prior art elements the examiner's analysis is based upon the reference as interpreted by the objective legal standard of “one of ordinary skill in the relevant art” IAW 35 USC 103 as explicated in the above rejection, accordingly:

Cross sectional Figs 2-9 all illustrate a face mask (i.e. a structure adapted to cover the face of a user) with elements 58, 24 (50 & 52) secured to the mask intermediate to fasteners 62. If the mask/hood assembly was not “secured” between elements 62, it could not operate and protect the

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user in the environment is was intended to be used, toxic smoke environments. The definition of the term secured is “to make or hold fast” (See attached definition from 10th ed of Merriam Webster Collegiate dictionary) Hence by dint of the force exerted by fasteners 62 upon all the relevant elements noted, that portion of the structure that lies between the fasteners 62 is “secured” because they are being “held fast,” if they did not then the device could not operate in its intended environment and protection of the user would be futile.

Regarding applicant’s first point, assertion of degree’s of performance of hoods, no evidence is provided that such a phenomenon exists in hoods for pulmonary protection of a user, protection to a degree that permits toxic vapors and fumes into the pulmonary system either results in death, injury of the user or at a minimum prevents/interferes with the first responder from performing his mission, the issue is not one of degree but one of meeting an absolute threshold of protection.

Regarding applicant’s second point, the term seal is given is broadest reasonable interpretation and art is read to the level of ordinary skill in the art and in its entirety. Seal is defined as closure that prevents the passage of gas. The prior art device is designed to be used in a toxic smoke filled environment by a human user with a pulmonary system that will be injured by such an environment and likely killed. Every aspect of the design of the relevant elements are for excluding such gases as an objective person of ordinary skill in the relevant art would appreciate and ascertain the device could only use. Yet by applicant logic, because this prior inventor gave deference to his colleagues and did not use the talismanic word “seal” he thus cannot have a seal.

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This argument is not in accord with the legal standards of 35 USC 103 nor the doctrine of inherency for that fact, hence such is not persuasive.

Regarding applicant's assertion that the examiner must point solely to the express reference, the examiner disagrees, the doctrines of inherence and obviousness (with the objective standard of one of ordinary skill in the relevant art) exemplify the fact that this assert made by applicant is legally in error.

Regarding the issue of body seals & inter-conversion, please note the rejection and response to prior arguments (noted below) which have already addressed these issues.

Regarding method claims:

The analysis applicant sets forth for patentability is wholly distinct from those of the other sets of claims, which amounts to a violation of 35 USC 101 which stipulate that one invention merits one patent. The examiner's "bald assertion" was based upon the premise that the method of use flowed from the structure of the corresponding apparatus claims. If applicant now wants to base the patentability of the method on grounds different from the apparatus, the examiner advises applicant to file a divisional application. Otherwise the claims are interpreted as not being distinct from the inventive concept/features and the rejection, as "bald" as it is, stands and IAW 35 USC 103 legal standard of patentability of "obvious as objectively viewed by one of ordinary skill in the relevant art" who would now how to use the device as designed and sitting on a shelf and hence just by using it would carry out the method.

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Regarding Respirator claims:

See figure 3 & cross-sectional figures 4-11 and the supporting text. The edge of 54 is a perimeter and the other relevant elements are “sealed” to this edge and hence meets the plain language of the claims of “a perimeter sealing edge” and thus would “sealably affix” to the shroud. Again any argument that asserts Tischer is not “sealed” is frivolous and contrary to a common sense reading of Tischer under the legal standard of 35 USC 103 of an objective person who is one of ordinary skill in the relevant art. Any respiratory designed as Tischer is designed and used in a toxic environment is sealed to preclude contamination of the interior, to not be sealed to do this renders the invention worthless and wholly useless.

Regarding Kit claims:

Use of the term “kit” in the pre-amble add nothing in terms of structure, no “kit” is illustrated by applicant. If “kit” added structure then applicant’s filing is flawed because he does not disclose (teach or illustrate) the structure of the kit. Applicant’s filing of an application with “kit” claims but devoid of any disclosure (teaching and illustration) of a “kit” is considered a contradictory inherent admission on the record that when the application was filed applicant was not providing additional structural limitations to the invention, but merely claiming the assemblage that is the device, which the prior art also equally discloses, hence the arguments are not persuasive.

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Regarding the substantive matters applicant points out in his kit claim arguments please refer to the relevant respirator claim responses, rejections.

Regarding summary & conclusory statements made by applicant regarding rejections to claims 9, 16, 34 & 40, they are all based upon erroneous conclusions of patentability for claims they depend from, being that the claims from which they depend have been analyzed and found to be unpatentable over the prior art IAW the relevant legal standards, these claims are further determined to be unpatentable.

EXAMINER RESPONSES TO APPLICANT'S PRIOR AMENDMENT:

Regarding the objections to the drawings, applicant's amendment is proper and responsive and resolves the issues, therefore the objections are withdrawn.

Regarding the rejections of the claims in regards to definiteness, applicant's amendment is proper and responsive and resolves the issues, therefore the rejections are withdrawn.

Regarding the rejections of the claims regarding obviousness, applicant's amendment is proper and responsive but fails to resolve the issues, therefore the rejections are retained and made final with a response to applicant's arguments as necessary noted below.

Note generally:

Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

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Applicant's arguments do not comply with 37 CFR 1.111© because they do not clearly point out the patentable novelty which he or she thinks the claims present in view of the state of the art disclosed by the references cited or the objections made. Further, they do not show how the amendments avoid such references or objections.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding applicant's assertion that the sealing member is not sealed in the area's between fastener's 62, please review the reference and note intervening/bridging element 60 which like sealing member 58 both circumferentially surround and seal the sealing member 58 to mask 26 & that these structures mediate the inter-connectivity between the mask and the hood. Applicant needs to read the reference in its entirety, where then one would appreciate that if the mask was not sealed to the hood in a complete manner then it would not operate to meet its very purpose/function, to protect the pulmonary system of a firefighter in a smoke filled environment.

Regarding applicant's second point of Tischer not disclosing a "kit" please point the element in the body of the claims that distinguish the "kit" over the prior art of record applied.

Please note:

In response to applicant's arguments, the recitation "kit" has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any

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patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

Regarding the assertion of lack of disclosure of “interchangeability”:

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., “interchangability”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Applicant does set forth in his method claims the “converting” a mask from one type of device that seals against a user to another, e.g. taking the mask from a body suit and placing it on a hood alone, but such a distinction is just the interchangability of the mask which Tischer discloses, and which one of ordinary skill in the art would consider to be a mere obvious intended use/result of using a releasable mask.

Regarding the respirator claims & Kit claims argument please note the above factually supported notation that points to how the mask of Tischer is sealed around its perimeter and how applicant needs to read the reference in its entirety.

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Furthermore it is noted that applicant points to no additional structural limitations of its "kit" that the rejection based upon the prior art of record does not render obvious.

Regarding the arguments drawn to the rejections utilizing Reeves & Motsinger, they are premised upon applicant's arguments to the relevant base claims being persuasive as allowable, however as noted above this is not the case, therefore these arguments are not persuasive and the rejections are maintained.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. US 6578572, 6478025.
8. This is a request for continuation of applicant's earlier Application No. 09765224. All claims are drawn to the same invention claimed in the earlier application and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the earlier application. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action in this case. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR

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1.136(a) will be calculated from the mailing date of the advisory action. In no, however, event will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Joseph F. Weiss, Jr., whose telephone number is (703) 305-0323. The Examiner can normally be reached from Monday-Friday from 8:30 AM to 4:30 PM.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Weilun Lo, can be reached at telephone number (703) 308-1957. The official fax number for this group is (703) 305-3590 or x3591.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0858.



JF Weiss

August 4, 2003



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